

them."³²⁵ Decisions as to the credibility of a cooperating witness's testimony remain for the jury to make.³²⁶

In addition, courts agree that evidence of a cooperating witness's duty to testify truthfully as part of the plea agreement may be admitted into evidence.³²⁷ Thus, evidence concerning a plea agreement and its provisions may have both a bolstering effect (because of the truthfulness requirement) and an impeaching effect (because of the promise of leniency) on the witness's credibility.³²⁸ Hence, the entirety of the plea agreement allows the jury to accurately assess the witness's credibility.³²⁹

³²⁵ Caminetti, 242 U.S. at 495 (citation omitted); see also United States v. Winter, 663 F.2d 1120, 1134 n.24 (1st Cir. 1981) (approving instruction that reads, in part, "[o]ne who testifies with the benefit of immunity, with a promise from the government that he will not be prosecuted, does not become an incompetent witness"), cert. denied, 460 U.S. 1011 (1983).

³²⁶ McGinnis, 783 F.2d at 758.

³²⁷ See, e.g. United States v. Lord, 907 F.2d 1028, 1029-31 (10th Cir. 1990) (collecting cases); cf. United States v. Sobamowo, 892 F.2d 90, 95 n.3 (D.C. Cir. 1989) (witness' testimony that he was ordered by the court to cooperate as part of plea bargain was admissible). The only dispute is whether evidence of the truthfulness requirement of a plea agreement may be admitted on direct examination of the witness, as the majority of circuits permit, or whether it may only be offered as evidence in rebuttal to a challenge to the credibility of the witness, as a minority of the circuits require. See Lord, 907 F.2d at 1029-31 (describing majority rule of First, Third, Fourth, Fifth, Sixth, Seventh, Eighth and Tenth Circuits and contrasting with minority rule of Second and Eleventh Circuits).

³²⁸ United States v. Drews, 877 F.2d 10, 12 (8th Cir. 1989); United States v. Townsend, 796 F.2d 158, 163 (6th Cir. 1986).

³²⁹ United States v. Mealy, 851 F.2d 890, 899 (7th Cir. 1988).